IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) Crl.W.P.No.830 of 2006
Date of decision : 8.5.2007

Smt. Manju & another .....Petitioners

Versus

State of Punjab & others
.....Respondents

2) Crl.Rev.No.629 of 2007
Date of decision : 8.5.2007

Sukhwinder Singh & another .....Petitioners

Versus

State of Punjab
.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER

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Present : Mr.P.S.Hundal, Advocate
for the petitioners in Crl.W.P.No.830 of 2006.

Mr. Kamaldeep S.Sidhu, Deputy Advocate General,
Punjab for the State.

Mr. J.S.Thind, Advocate
for the petitioners (respondent nos.3 and 4 in
Crl.W.P.No.830 of 2006) in Crl.Rev.No.629 of 2007.

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MAHESH GROVER, J.

This order will dispose of Criminal Revision No.629 of 2007 also.

According to an ancient fable, king Solomon used to rule a kingdom. He was loved by his subjects for his qualities as a king and his judicious approach towards them. One day two women are said to have come to his Court seeking justice. Both claimed to be

mothers of a child and each one was accusing the other of having deprived her of the custody of her son. The wise king told them to come the next day. And the following day when the women presented themselves in the Court, the King pronounced that the only solution is to divide the child by cutting him into two and to give half to each of the women. Upon hearing this, one woman burst into tears and said that she did not want the custody of the child and the same be given to the other woman, while the other agreed.

King Solomon gave the custody of the child to the woman who had volunteered to let the other lady keep the custody of the child, as his question had been answered by the conduct of this woman. She was the natural mother who could not bear to see her son being cut into two whereas the other claimant was clearly not the natural mother.

This Court is confronted with almost a similar situation where two women have laid their claim to the custody of one Amar Partap Singh but the 'Solomonian justice' cannot be the answer to the peculiar problem borne out of human greed for a son as this Court is fortunate to have scientific evidence determining the paternity of the child before it while king Solomon had to face the old adage "Paternity is a myth while maternity is a reality".

Briefly stated, the facts, which are being taken from the Crl.W.P.No.830 of 2006, are that the petitioner No.1 is the biological mother of Amar Partap Singh, who was clandestinely taken away from her custody soon after his birth by Ramesh Rani, a nurse and the child was given to the respondents No.3 and 4. The lap of petitioner

No.1 Manju was filled with a female child whose parentage is unknown.

The matter would have probably never come to light till a complaint was lodged by one roadside fruit vendor who noticed a dead body of a child being eaten up by dogs. The investigation of the complaint led to one Ramesh Rani, a nurse, who confessed that an old lady along with a young woman had come to her clinic and the young lady gave birth to a child and abandoned him ostensibly for the reason that she was an unwed mother. The child expired and the body was dumped by the said Ramesh Rani near the railway lines at some distance from Hussainpura Chowk, Amritsar. She also suffered a confessional statement that Ranjit Kaur, respondent No.4, resident of Raipur Kalan, Amritsar used to come to her for treatment and that she was extracting Rs.5,000/- to Rs.7,000/- per month from her on the pretext that she would bear a male child. The treatment continued for 12 to 13 months and in the last week of the month of June, the petitioner Manju came to Ramesh Rani where she delivered a male child on 1.7.2000. Ramesh Rani is said to have handed over the male child born to the petitioner Manju to Ranjit Kaur and in its place a female child was placed by the side of the petitioner No.1. An amount of Rs.20,000/- was allegedly paid by the respondents No.3 and 4 to the said Ramesh Rani for procuring the male child for them.

Ramesh Rani, Sukhwinder Singh and Ranjit Kaur were accordingly challaned by the police for having committed an offence under Sections 363, 365 and 368 read with Section 120-B of the Indian Penal Code. The trial Court convicted all the persons accused

which led to the filing of an appeal.

In the meantime, when the battle for the prosecution of the accused persons was going on, the petitioner filed the present Criminal Writ Petition No.830 of 2007 seeking custody of the minor child Amar Partap Singh, as the Court of Chief Judicial Magistrate vide its order dated 6.7.2006 had found the accused persons guilty and the DNA test conducted during the course of trial established the paternity of the child to be that of Manju and Harish Kumar, petitioners herein.

During the pendency of the Criminal Writ Petition the appellate court, which was seized of the matter by way of an appeal against the order of the Chief Judicial Magistrate dated 6.7.2006, dismissed the appeal and convicted and sentenced the appellants to undergo various periods of imprisonment, which are as follows :

Name	Offence	Sentence
Sukhwinder Singh	U/s 363 read with Section 120-B, IPC.	To undergo RI for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo further RI for six months.
	U/s 365 read with Section 120-B, IPC.	To undergo RI for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo further RI for six months.
	U/s 368 of IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo RI for six months.
Ranjit Kaur	U/s 363 read with Section 120-B, IPC.	To undergo RI for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo further RI for six months.
	U/s 365 read	To undergo RI for seven years and

with Section 120-B, IPC.	to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo further RI for six months.
U/s 368 of IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, to undergo further RI for six months.

Ramesh Rani was also sentenced.

Crl.Revision Petition No.629 of 2007 has been preferred against the said judgment.

Both, the Criminal Revision Petition as also the Criminal Writ Petition were heard together.

On 28.4.2007, while arguing the Criminal Revision Petition, learned counsel for the petitioners contended that he has no objection if the child is restored back to his biological natural parents and that his prayer in the revision petition may be considered sympathetically.

Concededly, the DNA test was conducted which established the paternity of the minor child. In view of this irrefutable evidence on record, there is no other conclusion which can be drawn, that the petitioner Manju would have had the custody of the child but for the sly and deceitful hand of Ramesh Rani, fuelled by the greed of the respondent nos.3 and 4 to have a son, which resulted in the petitioner being deprived of her legitimate son. Since the child was never born to the respondent nos.3 and 4, hence his custody with them would be termed to be unlawful and there is no alternative left but to retrieve the child from their custody and to restore him to his biological parents. Ordered accordingly.

However, this would also mean that the child himself

will be uprooted from his deceitful foster parents' home and he is likely to undergo mental torment and trauma. In this view of the matter, I deem it appropriate to direct Dr. B.L.Goel, Director of Vidya Sagar Institute of Mental Health, Amritsar to constitute a team under his supervision to grant constant counselling to the child in order to ensure that the transition of the child from his foster home to his natural home is completed with the minimum amount of damage to his psyche. The District Judge, Amritsar shall ensure that the child is handed over to the biological parents in complete consultation with the team so appointed by Dr.Goel. Smt. Manju and and Sh. Harish Kumar – The parents are also directed to get the counselling of the child done as directed by the team of counsellors. The District Judge shall also ensure that such a follow up is completed till the team of counsellors records its satisfaction regarding the rehabilitation of the child. Since the foster parents i.e. respondents No.3 and 4 must also have developed deep affection for the child, it is deemed appropriate to direct the petitioners not to obstruct their meetings with the child in case they wish to visit the family of the petitioners. The petitioners, who were present in Court, have assured that such visits shall not be obstructed and that the families will cooperate with each other to make the transplant of the minor successful in the new home. The writ petition is disposed of in the aforesaid terms.

In so far as the criminal revision petition is concerned, the petitioners' conduct reveals the inherent desire and greed to have a son, which compelled them to resort to such dubious means, but keeping in view the fact that the problem is purely humane and the

intention was only to acquire a male child and not to cause harm to any of the parties, I deem it appropriate to reduce the sentence of the petitioners in Crl.Revision Petition No. 629 of 2007 to the already undergone and also for the reason that the prime accused in this case in the given circumstances would be Ramesh Rani who had resorted to such an inhumane act.

Consequently, the criminal revision petition is also disposed of in the aforesaid terms.

The custody of the minor child shall be given to petitioner Manju and her husband Harish Kumar. The District Judge, Amritsar is directed to ensure the smooth transition of the minor child Amar Partap Singh from his foster home to his natural home in the manner directed above.

The parties, i.e. both the biological parents, the foster parents and the child shall present themselves before the District Judge, Amritsar on 18.5.2007, who shall oversee the handing over the custody of the child in consultation with Dr.B.L.Goel in the manner indicated above.

8.5.2007 (MAHESH GROVER)
JUDGE

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